

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

Lordstown Motors Corp., *et al.*,¹

Debtors.

Chapter 11

Case No. 23-10831 (MFW)

(Jointly Administered)

Related Docket No. 482

**ELAPHE PROPULSION TECHNOLOGIES LTD.’S RESPONSE AND RESERVATION
OF RIGHTS REGARDING DEBTORS’ SUPPLEMENTAL NOTICE OF POTENTIAL
ASSUMPTION AND ASSIGNMENT**

Elaphe Propulsion Technologies Ltd., by its undersigned counsel, for its response and reservation of rights regarding Debtors’ Supplemental Notice of (i) Potential Assumption and Assignment of Executory Contracts and Unexpired Leases and (ii) Cure Amounts [Dkt. No. 482] states as follows:

1. Each of the Debtors commenced chapter 11 bankruptcy cases in this Court on June 27, 2023 (the “Petition Date”).

2. The Debtors design, manufacture and sell electric vehicles, targeted primarily to commercial fleet customers. The Company’s only fully developed product to date is the “Endurance,” a full-size, all-electric pickup truck known chiefly for its innovative powertrain consisting of four in-hub electric motors.

3. Elaphe Propulsion Technologies Ltd. (“Elaphe”) licenses the in-hub electric motor technology used in the Endurance to Lordstown Motors Corp. (“LMC”) and provided engineering and project management support and other technical assistance to LMC on the Endurance program.

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are: Lordstown Motors Corp. (3239); Lordstown EV Corporation (2250); and Lordstown EV Sales LLC (9101). The Debtors' service address is 27000 Hills Tech Ct., Farmington Hills, MI 48331.

4. Elaphe and LMC are parties to: (i) a License Agreement dated March 16, 2020, as amended on July 21, 2020 (the “License Agreement”), granting LMC a perpetual non-exclusive license to use Elaphe’s patent rights, designs, software and other proprietary know-how, to make and sell the Elaphe Model L-1500 Endurance Motor for the Endurance program; and (ii) a March 16, 2020, Facilities and Support Agreement (the “Facilities Agreement”) contracting for Elaphe’s design, engineering and manufacturing support from ramp up to full production and launch of the Endurance.

5. The License Agreement and Facilities Agreement allow assignment by LMC under limited circumstances, including the transfer or sale of all or substantially all of LMC’s business or assets, provided the assignee or purchaser is not a “Restricted Purchaser”. Restricted Purchasers are identified in exhibits to the License Agreement and Facilities Agreement and are, with limited exceptions, Tier I and Tier II suppliers and other non-OEMs.

6. On August 8, 2023, the Court entered its Order (A) Establishing Bidding and Auction Procedures, (B) Scheduling Certain Dates with Respect Thereto, (C) Approving the Form and Manner of Notice Thereof (D) Approving Contract Assumption and Assignment Procedures, and (E) Granting Other Related Relief [Dkt. No. 237] (the “Procedures Order”). The Procedures Order governs both the sale of Debtors' assets and Debtors’ assumption and assignment of executory agreements.

7. Debtors filed and served Debtors’ Notice of (i) Potential Assumption and Assignment of Executory Contracts and Unexpired Leases and (ii) Cure Amounts [Dkt. No. 280] on August 21, 2023 (the “First Notice”). The First Notice schedules both the License Agreement and Facility Agreement as executory contracts potentially subject to assumption and assignment.

The First Notice scheduled a cure amount of “\$0” for the Facilities Agreement and \$283,961.19 for the License Agreement.

8. On August 30, 2023, Elaphe filed its *Response and Reservation of Rights Regarding Notice of Potential Assumption and Assignment* [Dkt. No. 349], pointing out that the Facilities Agreement is no longer executory, and reserving Elaphe’s right to object to the assignment of either agreement to a Restricted Person under 11 U.S.C. § 365(c)(1)(A) and to adequate assurance of future performance if offered under 11 U.S.C. § 365(b)(1)(C).

9. Debtors filed a *Supplemental Notice of (i) Potential Assumption and Assignment of Executory Contracts and Unexpired Leases and (ii) Cure Amounts* [Dkt. No. 482] (the “Supplemental Notice”) on September 27, 2023. The Supplemental Notice now schedules the cure amount due for the License Agreement at “\$0”.

10. On September 29, 2023, Debtors gave notice that they had selected LAS Capital LLC, (“LAS Capital”) as the Successful Bidder under the Procedures Order, subject to Bankruptcy Court approval.

11. For its response to Debtors’ Supplemental Notice and reservation of rights, Elaphe states the following:

(a) The Facilities Agreement has been fully performed and is not an executory agreement subject to assumption and assignment under 11 U.S.C. § 365.

(b) Elaphe is informed and believes that Debtors reduced the stated cure amount due in connection with the License from \$283,961.19 in the First Notice to “\$0” in the Supplemental Notice to reflect certain setoffs LMC may claim against Elaphe. Elaphe reserves and does not waive any defense or objection to any such LMC claim, whether asserted by LMC by way of setoff, recoupment or otherwise, and reserves and does not

waive any right of setoff or recoupment to which Elaphe may be entitled under any agreement, in law or at equity.

Dated: October 11, 2023

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